



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

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| Agency Name: | Board of Medicine, Department of Health Professions |
| VAC Chapter Number: | 18 VAC 85-120-10 et seq. |
| Regulation Title: | Regulations Governing the Certification of Athletic Trainers |
| Action Title: | Requirements for certification |
| Date: | 6/15/00 |

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

As mandated by Chapters 639, 682, and 747 of the 1999 General Assembly, the Board of Medicine has adopted proposed regulations for the certification of athletic trainers. Criteria for board certification include educational and examination requirements and submission of an application and fee. Regulations also provide criteria for biennial renewal of certification including a renewal fee and current certification by the national certifying body in athletic training. Standards of practice are set for individual practice and responsibility for supervision of persons holding provisional certification and for student athletic trainers. Fees, as necessary to support the regulatory and disciplinary activities of the board, are established in regulation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 85-120-10 et seq.: Regulations Governing Certification of Athletic Trainers was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Certification of athletic trainers and the promulgation of regulations for that purpose is mandated by Chapters 639, 682, and 747 of the 1999 General Assembly. Amendments to **Chapter 29 of Title 54.1** establish a definition of the practice of athletic training, set certain requirements for certification of the profession and authorize the Board to establish "appropriate training and educational credentials for the practice of athletic training".

§ 54.1-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist" which means an individual other than a doctor of medicine, osteopathy or podiatry who has successfully completed the requirements for licensure established by the Board (approved titles are limited to: Licensed Acupuncturist, Lic.Ac., and L.Ac.) and "physician acupuncturist" which means doctors of medicine, osteopathy, chiropractic and podiatry who have fulfilled the physician requirements for licensure to practice acupuncture established by the Board.

"Auricular acupuncture" means the subcutaneous insertion of sterile, disposable acupuncture needles in predetermined, bilateral locations in the outer ear when used exclusively and specifically in the context of an approved chemical dependency treatment program, under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist.

"Board" means the Board of Medicine.

"Healing arts" means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

"Physician assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed doctor of medicine, osteopathy, or podiatry.

"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular acupuncture as exempted in § 54.1-2901 when used specifically and exclusively in the context of a publicly supported comprehensive drug treatment program by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association.

"Practice of athletic training" means the prevention, recognition, evaluation, and treatment of injuries or conditions related to athletic or recreational activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition; and subsequent treatment and rehabilitation of such injuries or conditions under the direction of a licensed physical therapist and the patient's physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry, while using heat, light, sound, cold, electricity, exercise or mechanical or other devices.

"Practice of chiropractic" means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

"Practice of medicine or osteopathic medicine" means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method.

"Practice of occupational therapy" means the evaluation, analysis, assessment, and delivery of education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for individuals who have disabilities.

"Practice of physical therapy" means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders, but does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

"Practice of podiatry" means the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation proximal to the metatarsal-phalangeal joints. The

Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within the scope of practice of podiatry.

"Practice of radiologic technology" means the application of x-rays to human beings for diagnostic or therapeutic purposes.

"Practice of respiratory care" means the (i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a practitioner of medicine or osteopathic medicine; (ii) transcription and implementation of the written or verbal orders of a practitioner of medicine or osteopathic medicine pertaining to the practice of respiratory care; (iii) observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general physical response exhibit abnormal characteristics; and (iv) implementation of respiratory care procedures, based on observed abnormalities, or appropriate reporting, referral, respiratory care protocols or changes in treatment pursuant to the written or verbal orders by a licensed practitioner of medicine or osteopathic medicine or the initiation of emergency procedures, pursuant to the Board's regulations or as otherwise authorized by law. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate by the Board in accordance with the written or verbal order of a practitioner of medicine or osteopathic medicine, and shall be performed under qualified medical direction.

"Qualified medical direction" means, in the context of the practice of respiratory care, having readily accessible to the respiratory care practitioner a licensed practitioner of medicine or osteopathic medicine who has specialty training or experience in the management of acute and chronic respiratory disorders and who is responsible for the quality, safety, and appropriateness of the respiratory services provided by the respiratory care practitioner.

"Radiologic technologist" means an individual, other than a licensed doctor of medicine, osteopathy, podiatry, or chiropractic, or a dentist licensed pursuant to Chapter 27 (§ 54.1-2700 et seq.) of this title, who (i) performs, may be called upon to perform, or who is licensed to perform a comprehensive scope of diagnostic radiologic procedures employing equipment which emits ionizing radiation and (ii) is delegated or exercises responsibility for the operation of radiation-generating equipment, the shielding of patient and staff from unnecessary radiation, the appropriate exposure of radiographs or other procedures which contribute to any significant extent to the site or dosage of ionizing radiation to which a patient is exposed.

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist or person who is otherwise authorized by the Board of Dentistry under Chapter 27 of this title and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment which emits ionizing radiation which is limited to specific areas of the human body.

"Respiratory care" means the practice of the allied health profession responsible for the direct and indirect services, including inhalation therapy and respiratory therapy, in the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under qualified medical direction.

§ 54.1-2957.4. Certification as athletic trainer required; requisite training and educational requirements; powers of the Board concerning athletic training.

A. It shall be unlawful for any person to practice or to hold himself out as practicing as an athletic trainer unless he holds a certificate as an athletic trainer ninety days after the effective date of regulations promulgated by the Board implementing athletic trainer certification. The Board shall issue

certificates to practice athletic training to applicants for such certification who meet the requirements of this chapter and the Board's regulations.

B. The Board shall establish criteria for the certification of athletic trainers to ensure the appropriate training and educational credentials for the practice of athletic training. Such criteria may include experiential requirements and shall include one of the following: (i) a Virginia testing program to determine the quality of the training and educational credentials for and competence of athletic trainers, (ii) successful completion of a training program and passage of the certifying examination administered by the National Athletic Training Association Board of Certification resulting in certification as an athletic trainer by such national association, or (iii) completion of another Board-approved training program and certifying examination.

C. At its discretion, the Board may grant provisional certification to persons who have successfully completed an approved training program or who have met requisite experience criteria established by the Board. Such provisional certification shall expire as provided for in the regulations of the Board.

D. The Board shall promulgate such regulations as may be necessary for the certification of athletic trainers and the issuance of certificates to athletic trainers to practice in the Commonwealth. The Board's regulations shall assure the competence and integrity of any person claiming to be an athletic trainer or who engages in the practice of athletic training.

§ 54.1-2957.5. Advisory Board on Athletic Training established; duties; composition; appointment; terms.

A. The Advisory Board on Athletic Training shall assist the Board in formulating its requirements for the certification of athletic trainers. In the exercise of this responsibility, the Advisory Board shall recommend to the Board the criteria for certification of athletic trainers and the standards of professional conduct for certificate holders. The Advisory Board shall also assist in such other matters relating to the practice of athletic training as the Board may require.

B. The Advisory Board shall consist of five members appointed by the Governor for four-year terms. The first appointments shall provide for staggered terms with two members being appointed for a two-year term, two members being appointed for a three-year term and one member being appointed for a four-year term. Three members shall be at the time of appointment athletic trainers who have practiced for not less than three years, including one athletic trainer practicing at a secondary school, one practicing at an institution of higher education, and one practicing in a nonacademic environment. One member shall be a physician licensed to practice medicine in the Commonwealth and one member shall be a citizen appointed by the Governor from the Commonwealth at large.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two full consecutive terms.

§ 54.1-2957.6. Exceptions to athletic trainer certification.

A. The requirements for certification of athletic trainers shall not prohibit the recognition, evaluation, and treatment of injuries or conditions related to physical activity immediately upon the onset of such injury or condition, or the prevention of injuries or conditions, by any coach, physical education instructor or person conducting exercise or conditioning programs or classes within the scope of their duties as employees or volunteers; nor shall the requirements for certification of athletic trainers prevent student athletic trainers from practicing athletic training under the supervision and control of a certified athletic trainer or a person who is otherwise exempt from the athletic certification requirements.

B. Notwithstanding the provisions of §§ 54.1-2957.4 and 54.1-2957.5, any person who, prior to June 30, 1999, is employed in Virginia as an athletic trainer, or in the performance of his employment duties

engages in the practice of athletic training, shall not be required to obtain a certificate from the Board to continue to be so employed until July 1, 2002.

Further, § 54.1-2912.1 requires the Board to prescribe requirements to ensure continued competency for practitioners it regulates.

§ 54.1-2912.1. Continued competency requirements.

- A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.*
- B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*
- C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.*

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

SJR 122, a study resolution passed by the 1998 General Assembly, was prompted by a concern that the role of the athletic trainer has become increasingly significant to the safety and well-being of an expanding number of physically active individuals, especially minors participating in organized athletics. Although private credentialing existed, such certification was not mandatory, and athletic trainers who were not nationally certified may have no particular education or training qualifications. It was felt that this lack of regulation may pose a threat to the public in that athletic trainers are often the first responders to injuries at sporting and training events and must often make immediate, independent, and even life-threatening judgments as to the severity of those injuries.

To govern the conduct of the study, the Board of Health Professions employed the formal criteria and policies referenced in its publication *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions, 1998*. The methodology used included a review of the policy literature, of the current federal and state laws and regulations, of other states' disciplinary experiences, and of public comment. A newly developed research technique for sunrise review -- criticality scaling -- was instituted in this study. The criticality scaling methods employed assessed the risk of harm posed by incompetent performance of the tasks that an entry level nationally certified athletic trainer should be competent to perform. Also reviewed to evaluate potential risk was the available information concerning medical malpractice cases involving athletic trainers and the available information used by major malpractice insurance carriers to assess the risk of harm posed by a profession.

The empirical evidence examined by the Board included disciplinary data from other states that regulate athletic trainers, criticality rating results, malpractice insurance information, and actuarial prediction data sources. From several analyses of the criticality ratings, several consistent findings resulted. A panel of experts judged the likelihood of various types of injuries resulting from the practice of athletic training practice to be significantly higher for the “incompetent”(i.e., uncertified) vs. “competent” (i.e., nationally certified) athletic trainer. Children and adolescents posed a particular concern for the Board because of their vulnerability due to their minor status. Currently, it is estimated that 35 million minors (6 to 21 years) participate in sports in the United States. This figure is up from 20 million in 1991. Sports injuries account for the second largest health care expenditure for injuries in this age group. Injury rates for girls are estimated between 20 to 22% for girls and 39% for boys per season. The growing involvement of children in organized sports and fitness activities has been accompanied by not only increased numbers but by new types of injuries, particularly musculoskeletal in training situations.

Recommendations of the Board of Health Professions included the following:

- To ensure that the public is not misled by titles, “Athletic Trainer,” “Athletic Trainer Assistant,” or “Trainer” should be restricted through statutory certification to those who are certified by the National Athletic Trainers Association. No restriction should be placed on the scope of practice of other state regulated health care providers. The title “Athletic Trainer” is to be reserved to those adequately trained.
- Certification should be mandatory for those individuals who engage in the tasks in the recognition, evaluation and immediate care of athletic injuries, who do not have immediate, direct, on-site supervision of a licensed health care provider, and who provide athletic training to minors 21 years of age and younger. No restrictions should be placed on the practice of other regulated health care providers provided that they are practicing within the scope of their professional license.
- The Board of Medicine should be considered as the appropriate Board to regulate athletic trainers.
- The regulating Board should have the discretion to vary from National Athletic Trainers Association or National Athletic Trainers Association Board of Certification in setting educational, examination, and experience requirements for entry.
- A modified grandfather clause should provide a period of one year for individuals who are not currently nationally certified to meet the national certification requirements. Such persons must first have a bachelors degree in athletic training from a NATA accredited program.

Following recommendations of the study report in Senate Document No. 10 (1999), legislation was introduced and passed in the 1999 General Assembly to mandate certification of athletic trainers and the promulgation of regulations for that purpose (Chapters 639, 682, and 747). No person employed as an athletic trainer prior to June 30, 1999 is required to obtain certification to continue to be employed until July 1, 2002. The Board of Medicine must have its regulations for certification in effect in advance of that date in order to give athletic trainers sufficient time to file applications and become certified by that date. Failure to promulgate regulations in a timely manner would not only place the Board out of compliance with the statutory mandate but would

also jeopardize the employment of and services provided by athletic trainers in public and private settings across the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

All sections of these regulations are new; the provisions are as follows:

18 VAC 85-120-10. Definitions.

Definitions as necessary for clarity and compliance are provided.

18 VAC 85-120-20. Public participation.

Reference is given to board regulations for public participation in the regulatory process which apply to all professions regulated by the Board of Medicine.

18 VAC 85-120-30. Current name and address.

A provision is established requiring each certificate holder to keep the board informed of current name and address.

18 VAC 85-120-40. General requirements.

This section explicitly prohibits practice as an athletic trainer without certification from the board except as provided in § 54.1-2957.6 of the Code of Virginia.

18 VAC 85-120-50. Application.

Provisions of the regulation set forth the requirements for applying for certification.

18 VAC 85-120-60. Educational requirements.

The education requirements for an applicant for certification include graduation from an accredited program or completion of an internship that qualifies a person to be credentialed as a Certified Athletic Trainer from the national certifying body.

18 VAC 85-120-70. Examination requirements.

An applicant for certification must submit evidence of passage of the national entry level examination for athletic trainers.

18 VAC 85-120-80. Provisional certification.

Provisions are set forth for a graduate of an educational program to be granted provisional certification while waiting the results of the certifying examination. Provisional certification ends upon receipt of the examination results or after one year, whichever comes first.

18 VAC 85-120-90. Renewal of certificate.

Requirements for a biennial renewal are listed to include payment of a renewal fee and attestation of current certification by NATABOC, the national credentialing body in athletic training.

18 VAC 85-120-100. Reinstatement.

Requirements for reinstatement of a certificate that has been lapsed from more than two years or has been revoked by the board are established in this section.

18 VAC 85-120-110. Individual responsibilities.

The responsibilities of an individual athletic trainer for his patient are set forth in this section.

18 VAC 85-120-120. General responsibilities.

This section sets out the responsibility of a certified athletic trainer for the actions of persons under his supervision and direction to include assurance that they do not perform functions that require professional judgement or discretion in the practice of athletic training.

18 VAC 85-120-130. Supervisory responsibilities.

Subsection A of this section establishes the responsibilities and requirements for an athletic trainer in the supervision of a person with provisional certification. Subsection B establishes the responsibilities and requirements for an athletic trainer in the supervision of a student athletic trainer.

18 VAC 85-120-140. Violations.

This section provides that violations of Chapter 29 of Title 54.1 of the Code of Virginia may subject a certificate holder to sanctions as determined by the board.

18 VAC 85-120-150. Fees.

This section sets forth the fees necessary for regulation of this profession to include an application fee, biennial renewal fee, reinstatement fee and miscellaneous fees.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary

advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Amendments to Chapter 29 of Title 54.1 establish a definition of the practice of athletic training, set certain requirements for certification of the profession and authorize the Board to establish "appropriate training and educational credentials for the practice of athletic training". The Board was guided by the Advisory Board on Athletic Training which is representative of the various practice settings for the profession and of the diversity in geography and available educational and experiential resources in the state.

Some of the issues addressed during the development of regulations included:

1) Which examination or examinations should be required as specified in § 54.1-2957.4?

While the Code of Virginia mandates that criteria for certification shall include an examination, it does provide several options from which the Board may choose. The option most likely to provide a nationally and professionally-recognized minimal standard is passage of the certifying examination administered by the National Athletic Training Association Board of Certification (NATABOC) resulting in certification as an athletic trainer by the professional credentialing association for athletic trainers, the National Athletic Trainers Association (NATA). Of the estimated 900 athletic trainers in Virginia, over 500 are already NATA-certified.

The examination is comprised of five practice areas (i.e., content domains) resulting from the latest role delineation study conducted in 1995. The content domains are as follows: (1) prevention of athletic injuries, (2) recognition, evaluation and immediate care of athletic injuries, (3) rehabilitation and reconditioning of athletic injuries, (4) health care administration, and (5) education and counseling. Each of these content domains is broken down further into constituent tasks.

The NATABOC certification examination is administered five times a year in various locations in the state, including Richmond and Falls Church. The Advisory Board considered the issue of an examination as mandated by the Code and as necessary to ensure a standard of minimal competency to practice.

2) What training and educational credentials should be required for certification?

Prior to being allowed to sit for the NATABOC examination, national certification standards require that a candidate be a graduate of NATA-approved entry-level program of study in athletic training education accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Graduates must complete their program within two years, have a baccalaureate degree from a college or university, and complete at least 800 hours of supervised athletic training experience.

Those who have not completed an accredited program must complete an internship of 1500 hours of supervised experience with at least 1000 hours in a traditional athletic training setting at the interscholastic, intercollegiate or professional sports level. The additional 500 hours may be

attained in an allied clinical setting and/or sports camp under the supervision of a certified trainer. The intern must also complete certain specific didactic educational requirements with one course in each of the following areas: Health, Human Anatomy, Kinesiology/Biomechanics; Human Physiology; Physiology of Exercise; Basic Athletic Training and Advanced Athletic Training.

Accredited programs exist at Old Dominion University, University of Virginia, and James Madison University. In addition, there are currently unaccredited undergraduate programs at Virginia Commonwealth University, Shenandoah University, Norfolk State University, Liberty University, Hampton University, Longwood College, and several others.

The NATA has already announced that after January 1, 2004, it will not accept internship credentials in lieu of graduating from an accredited educational program. In anticipation of the NATA phase-out of the internship as a route to national certification, Virginia Commonwealth University and the College of William and Mary have begun the process of applying for program accreditation. Others schools with undergraduate programs are expected to also become accredited.

The Advisory Board considered the availability and distribution of accredited courses throughout the state in its recommendation of educational requirements for certification by the Board of Medicine.

3) How can regulations be promulgated that will adequately protect the public and meet the statutory mandate without unduly limiting access to care in some areas of the state?

Knowing that many persons currently working as athletic trainers would need some time to meet the criteria for certification, the legislation specified that no person employed as a trainer prior to June 30, 1999 would have to obtain certification from the Board prior to July 1, 2002 in order to continue to be employed. In addition, the Code specifies that persons who practice as athletic trainers have ninety days after the effective date of the regulations in which to fulfill the certification requirements. Therefore, athletic trainers in the Commonwealth have at least three years in which to become NATA-certified or to gain the credentials necessary to meet the requirements of the Board.

As a means of making specific course offerings available to persons who will seek to become credentialed prior to 2004 (the date on which the educational requirements for NATA-certification will change), the Advisory Board may work with other agencies of the state and with the secondary principals' association to encourage distance learning opportunities. Since the Virginia High School League supported the legislation mandating certification, it is likely that that group would also be supportive of efforts to get persons certified who are currently providing athletic training services in the public schools.

4) What should the Board require to ensure the continuing competency of athletic trainers?

In compliance with § 54.1-2912.1, the Board of Medicine must provide some measure of continuing competency for all professionals under its regulatory authority. The issue was to

determine the nature and type of continuing learning activities or courses that are necessary to minimally assure the Board that a practitioner is being exposed to new technologies and improved practices in the profession. The Advisory Board recommended and the Board adopted the standard for evidence of continued competency to be current certification by NATABOC. That body requires 80 hours of continuing education, including recertification in CPR, every three years, adherence to the NATABOC Standards of Professional Practice, maintenance of a continuing education folder, and submission of an annual CEU maintenance fee of \$40 or payment of NATA annual dues of \$185.

5) What fees should the Board require in order to fund the regulatory and disciplinary program for athletic trainers?

The Department of Health Professions has developed "Principles for Fee Development" to which all boards should adhere in the consideration of a fee structure for any set of regulations. Within those principles, the Board of Medicine has delineated a three-tiered structure for the various professions it regulates. The first tier consists of medical doctors, chiropractors, podiatrists, and osteopaths, who have a high degree of independent practice and relatively high number of disciplinary cases. The second tier consists of physical therapists, occupational therapists, radiologic technologists, physician assistants, licensed acupuncturists, and respiratory care practitioners who practice independently but usually work within organizations and have a relatively low level of disciplinary cases. The third level consists of radiologic technologists-limited and physical therapist assistants, who do practice only under supervision and who also have a low level of disciplinary cases.

In the promulgation of regulations, the Board determined that fees for athletic trainers should be equated with the fees set for professions in the second tier of regulated entities.

6) What should be the parameters and requirements for supervision by an athletic trainers of persons who work under their direction?

In determining the appropriate level of supervision, the Advisory Board had to balance reality and availability of services with competency and public safety. Obviously, the range of ability and experience of uncertified persons working with a certified athletic trainer is immense - from the adult who has completed all course work and internship hours to qualify for certification and is just awaiting the results of an examination to the freshman in high school who is volunteering to be a student athletic trainer for the football team. Likewise, the variety in settings and acuity of patients requires some flexibility in the extent to which the athletic trainer must provide "hands-on" oversight of the services.

To accommodate the variety of personnel, responsibilities and work settings, the Board proposed somewhat different regulations for the supervision of persons with provisional certification and those who are student athletic trainers. Supervision of a provisional certificate holder may be by written protocol with provisions for periodic review and evaluation and with guidelines for availability and ongoing communication proportionate to factors such as practice setting and experience. Supervision of a student athletic trainer must be more direct and on-going and

requires the certified trainer to plan, direct and evaluate each activity and delegate only those tasks consistent with the level of competency and experience of the student.

In both cases, the certified athletic trainer remains responsible for the actions of persons engaging in the practice of athletic training under supervision and direction and must ensure that non-certified persons are performing functions that do not require professional judgement or discretion. (Section 120)

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

a) Cost to the agency for implementation and enforcement of proposed regulation:

(i) Fund source: As a special fund agency, the Board of Medicine must generate sufficient revenue to cover its expenditures from non-general funds, specifically the fees it charges to applicants licensees.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures:

One-time expenditures:

The Board will incur approximately \$2,000 in cost for printing and mailing final amended regulations to interested parties. There will be no additional cost for conducting a public hearing, which will be held in conjunction with a scheduled committee or board meeting.

Ongoing expenditures:

Impact on Board revenue:

Initially, the Board will have revenue from applicants for certification - if the 500 who are currently NATABOC certified seek certification from the Board of Medicine, there would be an increase in the Board's revenues of \$65,000 during the first year of certification. Thereafter, the Board could expect biennial revenues of approximately \$100,000.

Impact on Board expenditures:

The Board of Medicine will allocate costs attributable to this profession, including the cost of a program support technician. Costs for investigations and disciplinary proceedings are unknown, but are expected to be low. Revenues should be sufficient to offset any additional costs, and no additional staff is required to perform necessary functions of licensing and discipline.

b. Projected cost on localities:

There are no projected costs to localities.

c. Description of entities that are likely to be affected by regulation:

Persons who practice as athletic trainers will be required to have certification beginning in 2002. The Code does not prohibit the recognition, evaluation, and treatment of injuries or conditions related to physical activity immediately upon the onset of such injury or condition, or the prevention of injuries or conditions, by any coach, physical education instructor or person conducting exercise or conditioning programs or classes within the scope of their duties as employees or volunteers; nor do the requirements for certification of athletic trainers prevent student athletic trainers from practicing athletic training under the supervision and control of a certified athletic trainer or a person who is otherwise exempt from the athletic certification requirements.

d. Number of persons affected: Since this profession is currently not regulated in any fashion, it is unknown exactly how many persons will be affected. It is estimated that there are approximately 900 persons practicing as athletic trainers, but there are only 500 currently certified by NATABOC. Other persons are in the process of seeking NATA credentialing, so they will be qualified to be certified by the Board in 2002.

e. Projected costs to the affected entities:

To become certified by the Board of Medicine, an applicant must have graduated from an approved program in athletic training or completed an internship and taken seven required courses in the sciences and athletic training. Educational costs would vary depending on the route to certification. For those seeking a baccalaureate degree, costs would include those of a four-year public college or university. Many student athletic trainers are able to offset those costs through scholarships or work study programs. For those seeking an internship route to certification, the primary costs would be a per-hour charge for the course work. The hours of supervised experience are typically volunteer hours, though some may be compensated for their service.

Also required is the certification examination offered by NATABOC. If a candidate is a member of NATA, the examination costs \$300 - if not a member, the cost is \$350. At least 500 persons in Virginia currently hold the credential of Certified Athletic Trainer by the national board, so their only additional cost for state certification will be the Board's application fee of \$130.

To remain certified by the Board, an athletic trainer will be required to pay a biennial renewal fee of \$135. In addition, he must attest to current certification by NATABOC, which requires 80 hours of continuing education, including CPR recertification, every three years and payment of a \$40 annual CEU maintenance fee or annual NATA dues of \$185. Hours of continuing education must be approved by NATABOC from a wide variety of providers, who offer courses for home

study and other settings. Course listings are posted on the Internet and range in cost from zero to several hundred dollars.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The following regulations are proposed for 18 VAC 85-120-10 et seq.:

18 VAC 85-120-10. Definitions.

In addition to terms defined in § 54.1-2900 of the Code of Virginia, definitions for "accredited educational program," "advisory board," "athletic trainer or certified athletic trainer," "board," and "NATABOC" are necessary for clarity and compliance with regulations.

18 VAC 85-120-20. Public participation.

Reference is given to board regulations for public participation in the regulatory process, which apply to all professions regulated by the Board of Medicine.

18 VAC 85-120-30. Current name and address.

A provision is established requiring each certificate holder to keep the board informed of current name and address within 30 days of any change. The regulation further prescribes that any notice sent to an address on record shall be duly given.

18 VAC 85-120-40. General requirements.

This section explicitly prohibits practice as an athletic trainer without certification from the board except as provided in § 54.1-2957.6 of the Code of Virginia.

18 VAC 85-120-50. Application.

Provisions of the regulation set forth the requirements for applying for certification to include submission of a completed application form and prescribed fee, verification of professional education, verification of professional activity, documentation of passage of the national examination, and if licensed or certified in another state, verification that there has been no disciplinary action taken or pending in that jurisdiction.

18 VAC 85-120-60. Educational requirements.

The education requirements for an applicant for certification include graduation from an accredited program or completion of an internship that qualifies a person to be credentialed as a Certified Athletic Trainer from the national certifying body.

18 VAC 85-120-70. Examination requirements.

An applicant for certification must submit evidence of passage of the national entry-level examination by the National Athletic Trainers' Association Board of Certification (NATABOC).

18 VAC 85-120-80. Provisional certification.

Provisions are set forth for a graduate of an educational program to be granted provisional certification while waiting the results of the certifying examination. Provisional certification ends upon receipt of the examination results or after one year, whichever comes first.

18 VAC 85-120-90. Renewal of certificate.

Requirements for a biennial renewal are listed to include payment of a renewal fee and attestation of current certification by NATABOC, the national credentialing body in athletic training.

18 VAC 85-120-100. Reinstatement.

Requirements for reinstatement of a certificate that has been lapsed from more than two years include payment of a fee and evidence of current certification by NATABOC. Reinstatement of a license revoked by the board may be reinstated pursuant to § 54.1-2921 of the Code.

18 VAC 85-120-110. Individual responsibilities.

The responsibilities of an individual athletic trainer for his patient are set forth in this section consistent with the definition of athletic training in § 54.1-2900 of the Code of Virginia.

18 VAC 85-120-120. General responsibilities.

This section sets out the responsibility of a certified athletic trainer for the actions of persons under his supervision and direction to include assurance that they do not perform functions that require professional judgement or discretion in the practice of athletic training.

18 VAC 85-120-130. Supervisory responsibilities.

Subsection A of this section establishes the responsibilities and requirements for an athletic trainer in the supervision of a person with provisional certification, who has completed his educational requirement and is waiting for passage of an examination. Supervision of a provisional certificate holder must be through a written protocol to include at a minimum provisions for the review and evaluation of services and outcomes for a patient and guidelines for availability and communication proportionate to several factors, including practice setting, acuity of population, and experience of the supervisee.

Subsection B establishes the responsibilities and requirements for an athletic trainer in the supervision of a student athletic trainer. In recognition that the student athletic trainer may have a wide range of skill-level and experience, the regulations states that supervision must be on-site and daily, that the certified athletic trainer must plan, direct and evaluate the performance of the student, and that only non-discretionary tasks appropriate to the level of competency and experience must be assigned.

18 VAC 85-120-140. Violations.

This section provides that violations of Chapter 29 of Title 54.1 of the Code of Virginia may subject a certificate holder to sanctions as determined by the board. This is a standard provision in regulations of the board and refer the regulant to standards for unprofessional conduct and sanctions set forth in the Code.

18 VAC 85-120-150. Fees.

This section sets forth the fees necessary for regulation of this profession to include an application fee, biennial renewal fee, reinstatement fee and miscellaneous fees for late renewal, provision of a duplicate certificate, returned check, or letter of verification. Fees are established consistently with fees for other professions regulated by the Board of Medicine and in compliance with the Principles for Fee Development established by the Department.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Advisory Board on Athletic Training, whose members were appointed in September of 1999 by the Governor, met on October 28, 1999 to discuss the statutory mandate for certification and the potential regulations to be developed. Given that the Board of Medicine is mandated to promulgate regulations for certification, there were no alternatives to the regulatory process considered and the Advisory Board recommended publication of a Notice of Intended Regulatory Action at the earliest possible date.

The Advisory Board reviewed the statutory definition of athletic training, exemptions to certification, and criteria for the training, experience and examination as set forth in the Code of Virginia. In addition to a requirement for appropriate training and educational credentials, the statute requires that criteria for certification established by the Board include an examination as evidence of competency to practice athletic training. Therefore, the Board must first consider the alternatives available that will meet the criteria of the Code, will ensure that the public is adequately protected and at the same time will be reasonable and accessible to all persons in the Commonwealth.

To address the examination requirements, the Board considered the alternatives set forth in § 54.1-2957.4, which include a) an examination created and administered by the Virginia Board; b) a certifying examination by the National Athletic Training Association (NATA) Board of

Certification; or c) another Board-approved training program and certifying examination. The Advisory Board has concerns about the possible establishment of a state-approved certifying examination because it could be expensive to develop an examination that could be independently validated as psychometrically sound and also legally defensible. To find the expertise necessary, the Board would likely need to out-source examination development and administration, which could be costly on a per capita basis for a limited number of applicants. Initially, members of the Advisory Board and the Virginia Athletic Trainers Association support the adoption of the NATA certifying examination for Virginia, since they are unaware of any other certifying examination which the Board could approve. State examinations approved for certification or licensure by other states, such as Texas, may be considered for approval in Virginia if an applicant is seeking certification by endorsement.

The Board considered regulations of other states and requirements of recognized national organizations of athletic trainers and credentialing bodies in the development of regulations for certification in Virginia and concluded that certification by NATABOC was the most reasonable and least burdensome alternative.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Notice of Intended Regulatory Action was sent to those persons on the board's public participation mailing list and published in the Register of Regulations on February 14, 2000 with a request for comments to be received by the Board by March 15, 2000. During that period, the Board received no comment on its intent to develop regulations for certification. Since the state association and others representing a range of practice settings were included in the deliberations of the Advisory Board to advise the Board of Medicine on appropriate requirements, interested parties had the opportunity to voice their opinions during the course of those meetings.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Prior to that adoption of proposed amendments, the Advisory Board on Athletic Trainers, the Legislative Committee, and the Board met in open meetings to review the current regulations in light of a mandate for certification. The clarity and reasonableness of the language that was adopted had the approval of the Assistant Attorney General who worked with the Board in drafting regulatory language, the practitioners who represent various types and settings, and the two citizens members of the Board.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public Participation Guidelines of the Board of Medicine (18 VAC 85-10-10 et seq.) require a thorough review of regulations each biennium. Therefore, the board would be scheduled to begin an overall review of these regulations in 2002. The Advisory Board will review the content of the regulations at that time and consider any comment from the public. It will then recommend retention of current regulations or submission of a pre-NOIRA to begin the process of amending regulations to the full board for consideration.

Finally, the Board of Medicine and the Advisory Board receive public comment at each of their meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The agency has reviewed the proposed regulation in relation to its impact on the institution of the family and family stability. There would be no effect of the proposal on the authority and rights of parents, economic self-sufficiency or the marital commitment. Since the proposed regulation will require persons to pay a fee in order to obtain a certificate to practice, there will be some effect on disposable family income.